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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SUZI ALTMAN,

Plaintiff,

V.

UNIVERSITY PRESS OF
MISSISSIPPI and
HALEY R. BARBOUR

Defendants.

Case No. 3:16-cv-00883-CWR-LRA

**ANSWER TO AMENDED
COMPLAINT AND
AFFIRMATIVE DEFENSES OF
DEFENDANT UNIVERSITY
PRESS OF MISSISSIPPI**

Response Date: January 18, 2017

Action Filed: 11/10/2016
Amended: 12/09/2016

1 On November 10, 2016, Plaintiff filed a Complaint in this case against the
2 University Press of Mississippi (“Press”) and Haley R. Barbour alleging copyright
3 infringement under the U.S. Copyright Act. (Docket Entry No. 1). The Complaint
4 alleged infringement of photographs used in a Press publication entitled “America’s
5 Great Storm: [sic] Leading Through Hurricane Katrina”. On December 7, 2016,
6 Defendant Press filed a Motion for Extension of Time to Respond to Complaint
7 (Docket Entry No. 4), which motion was granted by Text-Only Order on December
8 8, 2016, thereby extending the time for response to on or before January 11, 2017.
9 Due to both Defendants having no knowledge of what photographs were alleged to
10 be infringed and no basis whatsoever upon which to responsively plead or answer
11 and upon instigation of the Defendants, the Plaintiff on December 9, 2016, filed an
12 Amended Complaint setting forth certain specific photographs alleged to be
13 infringed by the Press’ publication and other alleged infringement matters. (Docket
14 Entry No. 5, and 5-1 through 5-4).

15 Defendants have been in discussions with Plaintiff’s counsel concerning the
16 matter and on January 10, 2017, Defendant Haley Barbour filed on behalf of both
17 named defendants an unopposed Consent Motion for Extension of Time to Plead or
18 Otherwise Respond to Amended Complaint (Docket Entry No. 10), to extend such
19 date to January 18, 2017, which was granted by Order on January 11, 2017.

20 Defendant University Press of Mississippi hereby responds to and answers
21 the Amended Complaint of Suzi Altman (“Plaintiff”), and sets forth its Affirmative
22 Defenses as follows:

23
24 1. University Press is without knowledge or information sufficient to form a
25 belief as to the truth of the facts and/or allegations of Paragraph 1, and on that basis
26 therefore denies them.

27
28

1 2. University Press admits that it is a non-profit governmental entity that
2 publishes literary works and maintains its main office and principal place of
3 business in the State of Mississippi at 3825 Ridgewood Road, Jackson, MS and has
4 a registered agent for service of process as filed with the MS Secretary of State, that
5 agent being listed as Tonia Lonie. University Press admits that a letter dated June
6 15, 2016, and entitled "The University Press of Mississippi: America's Great
7 Storm" with a two-page enclosure entitled "Notice of Claim" was delivered to Leila
8 W. Salisbury on or about June 20, 2016.

9
10 3. University Press is without knowledge or information sufficient to form a
11 belief as to the truth of the facts and/or allegations of Paragraph 3, and on that basis
12 therefore denies them.

13
14 4. The allegations of Paragraph 4 state legal conclusions to which no response
15 is required. To the extent that a response is required, University Press denies the
16 allegations of Paragraph 4.

17
18 5. The allegations of Paragraph 5 state legal conclusions to which no response
19 is required. To the extent that a response is required, University Press denies the
20 allegations of Paragraph 5.

21
22 6. The allegations in Paragraph 6 constitute legal conclusions to which no
23 response is required. To the extent a response is required, University Press denies
24 violation of copyright law and denies infringement and the allegations of Paragraph
25 6.

26
27 7. University Press is without knowledge or information sufficient to form a

1 belief as to the truth of the facts and/or allegations of the first sentence of Paragraph
2 7, and on that basis therefore denies them. University Press admits to having
3 knowledge that the Plaintiff was employed in 2005 by the Mississippi Emergency
4 Management Agency (MEMA) “[t]o augment MEMA’s Public Information during
5 the response and recover [sic] for Hurricane Katrina”. University Press is without
6 knowledge or information sufficient to form a belief as to the truth of the remaining
7 facts and/or allegations of Paragraph 7, and on that basis therefore denies them.
8

9 8. University Press is without knowledge or information sufficient to form a
10 belief as to the truth of the facts and/or allegations of Paragraph 8, and on that basis
11 therefore denies them.

12
13 9. University Press is without knowledge or information sufficient to form a
14 belief as to the truth of the facts and/or allegations of Paragraph 9, and on that basis
15 therefore denies them.

16
17 10. University Press admits that it published a book entitled “America’s Great
18 Storm: Leading Through Hurricane Katrina” in 2015. University Press admits
19 receiving correspondence from Bill Luckett dated February 22, 2016, entitled
20 “America’s Great Storm” and referring to a letter sent to a Robert Cook, but is
21 without knowledge or information sufficient to form a belief as to the truth of the
22 facts and/or allegations and the basis of the contents of that correspondence, and on
23 that basis therefore denies them; sending to William O. Luckett, via counsel,
24 correspondence dated March 8, 2016, entitled “The University Press of Mississippi:
25 America’s Great Storm”; and receiving, via counsel, correspondence from Bill
26 Luckett dated April 29, 2016, entitled “The University Press of Mississippi:
27 America’s Great Storm”, but is without knowledge or information sufficient to
28

1 form a belief as to the truth of the facts and/or allegations and the basis of the
2 contents of that correspondence, and on that basis therefore denies them.
3 University Press is without knowledge or information sufficient to form a belief as
4 to the truth of any other facts and/or allegations of Paragraph 10, and on that basis
5 therefore denies them.

6

7 11. University Press is without knowledge or information sufficient to form a
8 belief as to the truth of the facts and/or allegations of Paragraph 11, and on that
9 basis therefore denies them.

10

11 12. The allegations of paragraph 12 state legal conclusions to which no response
12 is required. To the extent that a response is required, University Press denies the
13 allegations of Paragraph 12.

14

15 13. The allegations in Paragraph 13 constitute legal conclusions to which no
16 response is required. To the extent a response is required, University Press denies
17 the allegations of Paragraph 13 and denies that the Plaintiff is entitled to any
18 judgement or relief requested or demanded in the amended complaint, or to any
19 judgment or relief whatsoever.

20

21 **WHEREFORE Paragraph**

22

23 14. University Press restates and hereby incorporates by reference its responses
24 to Paragraphs 1 through 13 above.

25

26 15. University Press denies that the Plaintiff is entitled to any judgement or relief
27 requested or demanded in the amended complaint or in the WHEREFORE
28

1 Paragraph, or to any judgment or relief whatsoever.
2

3 16. WHEREFORE, the University Press denies each and every allegation not
4 specifically admitted or otherwise responded to above. The University Press
5 specifically denies that it has infringed or is liable for infringement of any copyright
6 or copyright rights of the Plaintiff or that it has violated the Plaintiff's rights and
7 respectfully prays that this Court will dismiss the amended complaint with
8 prejudice.
9

10 17. WHEREFORE, the University Press denies that the Plaintiff is entitled to any
11 relief whatsoever of any kind against the University Press and that the University
12 Press should be awarded all costs of this action including attorneys' fees.
13

14 18. WHEREFORE, the University Press should be provided with all such other
15 and further relief as the Court deems just and proper.
16
17

18 **AFFIRMATIVE DEFENSES**
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20 Defendant University Press of Mississippi asserts the following Affirmative
21 Defenses:
22

23 **FIRST DEFENSE**
24

1. University Press ("Press") is not liable for any claim made by the Plaintiff in
25 this matter.
26

27 University Press, as the publisher, and Haley R. Barbour and Jere Nash, as
28 the authors, executed a Publishing Agreement, Contract No. A15-068, on March

31, 2015, concerning a work entitled “America’s Great Storm: Leading Through Hurricane Katrina” (“Work”). Pursuant to that agreement, the authors specifically represented and warranted, among other matters, that the Work as submitted was innocent and without matter that would infringe any copyright or other proprietary right of privacy, that the Work was free of all claims, and that the Work had not been registered with the Copyright Office of the United States in any form. Further, the authors agreed to indemnify and hold the Press harmless both before and after publication of the Work from any claim, suit, or proceedings (including the reasonable cost of defense and any resulting liability, less expense, or damage) asserted or instituted by reason of publication or sale of the Work or exercise of any rights granted the Press under the terms of the Agreement and arising from the breach of alleged breach of the warranties set forth in the Agreement. All warranties and indemnities were to survive in the event the Agreement was terminated. The obligations of the authors were agreed to be joint and several.

The authors agreed to obtain at their own expense all permissions necessary to quote from or reproduce copyrighted material or other material that was the property of others and to transmit such permissions to the Press in writing with the final manuscript. Any and all advice supplied by the Press to the authors regarding permissions, fair use, copyright law, and related issues were not in any way to affect or alter the authors' warranty as stated in the Agreement.

The Publishing Agreement is incorporated herein as Exhibit 1.

SECOND DEFENSE

2. The use of all photographs in the University Press publication was innocent and reasonably based on affirmative assurances and permissions and/or licenses provided to it by each of the respective owners of the rights to the photographs. The University Press proceeded at all relevant times under a good faith belief

concerning all permissions and ownership representations that such use was lawful and credited each photograph individually in the publication based on those assurances and permissions and/or licenses.

THIRD DEFENSE

3. Plaintiff's amended complaint fails to state any claim upon which relief may be granted.

FOURTH DEFENSE

4. Plaintiff's amended complaint fails for lack of personal jurisdiction over the Defendant.

FIFTH DEFENSE

5. Plaintiff's complaint fails for improper venue.

SIXTH DEFENSE

6. Plaintiff's complaint fails for insufficient process.

SEVENTH DEFENSE

7. Plaintiff's complaint fails for insufficient service of process.

EIGHTH DEFENSE

8. To the extent that the Plaintiff has copyright rights to any relevant material, Plaintiff's claims are barred because any use or proposed use by Defendant of Plaintiff's material constitutes fair use under 17 U.S.C. §107.

NINTH DEFENSE

9. Defendant's use of relevant material involves material that is either in the public domain, has not been registered, and/or has been published previously by other parties and/or is owned or co-owned by other parties. Further, University Press currently lacks sufficient knowledge concerning the allegations of the Plaintiff concerning ownership of the copyrights in this matter and, on that basis, denies that the Plaintiff is the owner of the copyrights at issue in this case.

TENTH DEFENSE

10. Plaintiff's claims are barred by the doctrine of unclean hands.

ELEVENTH DEFENSE

11. Plaintiff's claims are barred by the doctrines of license, consent, acquiescence, acknowledgment, ratification, laches, estoppel, and/or waiver.

TWELFTH DEFENSE

12. Plaintiff lacks valid registrations of copyrights, failed to obtain valid copyright registrations, failed to properly and/or timely register her alleged works or material, failed to notice any alleged registrations, and/or failed to comply with statutory requirements or formalities.

THIRTEENTH DEFENSE

13. Plaintiff's claims are barred by, and University Press' use of relevant material and right to publish is protected under, the free speech constitutional protections of the First Amendment to the United States Constitution.

FOURTEENTH DEFENSE

14. Plaintiff's claims are barred by the doctrine of equitable estoppel.

FIFTEENTH DEFENSE

2 15. University Press asserts that Plaintiff does not own copyright rights in
3 relevant material that the University Press has used in its publication and Plaintiff's
4 claims are nevertheless barred since any copyright claimed in such material is
5 invalid and/or unenforceable.

SIXTEENTH DEFENSE

8 16. To the extent that Plaintiff owns any copyright rights whatsoever to any
9 relevant material that University Press has used in its publication, Plaintiff's claims
10 are barred and/or unenforceable under the doctrine of misuse of copyright.

SEVENTEENTH DEFENSE

13 17. Plaintiff's claims are barred since she has forfeited and/or abandoned her
14 rights to copyright in relevant material that University Press has used in its
15 publication.

EIGHTEENTH DEFENSE

18. Plaintiff's claims are barred due to lack of standing to assert claims for any
claimed or alleged copyright.

NINETEENTH DEFENSE

22 19. Plaintiff's claims are barred since the damages or statutory damages sought
23 are unconstitutionally excessive and are disproportionate to any actual damages that
24 may have or will be sustained, all in violation of the Due Process Clause.

TWENTIETH DEFENSE

27 20. Plaintiff's claims are barred since the University Press is immune from such
28 claims and damages under the Eleventh Amendment to the United States

1 Constitution.

3 **TWENTY-FIRST DEFENSE**

4 21. Plaintiff has failed to join indispensable parties.

6 **TWENTY-SECOND DEFENSE**

7 22. Any action by the Plaintiff impeding promotion and/or future publication(s)
8 by the University Press in this matter would be an unconstitutional restraint and/or
9 prior restraint.

11 **TWENTY-THIRD DEFENSE**

12 23. Plaintiff's claims are barred for lack of subject matter jurisdiction to the
13 extent the Plaintiff lacks valid registrations of copyright alleged in the amended
14 complaint.

16 **TWENTY-FOURTH DEFENSE**

17 24. Plaintiff's claims are barred to the extent that the relevant alleged registration
18 applications have caused fraud upon the Copyright Office.

20 **TWENTY-FIFTH DEFENSE**

21 25. Plaintiff's claims are barred by relevant and applicable statutes of limitations.

23 **TWENTY-SIXTH DEFENSE**

24 26. To the best of the Defendant's current knowledge, any and all use of relevant
25 photograph material in the publication and the Work was properly permitted and/or
26 licensed or consented to by the owners of the appropriate rights in such material.

TWENTY-SEVENTH DEFENSE

2 27. University Press has not infringed upon the copyright rights of the Plaintiff or
3 any other party concerning material and photograph material it has used in its
4 publication. Plaintiff's claims are barred because she impliedly authorized the
5 Defendant's allegedly infringing use of her works.

TWENTY-EIGHTH DEFENSE

8 | 28. Plaintiff's claims are not ripe for adjudication.

TWENTY-NINTH DEFENSE

11 29. Plaintiff's claims barred in whole or in part by her failure to mitigate her
12 damages, if any.

THIRTIETH DEFENSE

15 30. To the extent of the Defendant's current knowledge, the photographs in the
16 Work are not the Plaintiff's photographs and/or other parties own the rights to
17 copyright to the photographs published in the Work.

THIRTY-FIRST DEFENSE

20 31. The Court lacks subject matter jurisdiction of this action since the Plaintiff
21 lacks statutory and Constitutional standing to bring this action.

THIRTY-SECOND DEFENSE

24 | 32. Plaintiff's claims are barred under 17 U.S.C. §101, et seq. and/or 17 U.S.C.
25 | §504.

THIRTY-THIRD DEFENSE

28 | 33. Plaintiff's claims are barred for lack of subject matter jurisdiction since there

exists a lack of valid copyright registrations and/or registration has not properly or timely occurred.

THIRTY-FOURTH DEFENSE

34. Plaintiff's claims to damages, statutory damages, and attorneys' fees and costs are barred by the U.S. Code, U.S. Constitution, and/or the U.S. Copyright Act.

THIRTY-FIFTH DEFENSE

35. Plaintiff's claims to any and all damages, if any exist and which the Defendant disputes, are limited to actual damages equal to a reasonable license fee for use of a photograph.

THIRTY-SIXTH DEFENSE

36. Plaintiff's claims fail since third party(ies) claim ownership and rights in copyright to relevant material that the Defendant has used in its publication.

THIRTY-SEVENTH DEFENSE

37. All material produced under the contract between the Plaintiff and the Mississippi Emergency Management Agency (MEMA) was work product which MEMA owned upon termination of the contract.

THIRTY-EIGHTH DEFENSE

38. All material produced under the contract between the Plaintiff and MEMA was work product for which MEMA holds, at a minimum, co-ownership rights and which was a joint work.

THIRTY-NINTH DEFENSE

39. Defendant holds a license obtained from MEMA to use the material that

Defendant used in the Work, since the material was the subject of an unrestricted license and MEMA holds an unrestricted license to use the material.

FORTIETH DEFENSE

40. The material in the Work alleged to be the property of the Plaintiff was used in the Work under an actual and/or implied license.

FORTY-FIRST DEFENSE

41. The material in the Work alleged to be the property of the Plaintiff did not and does not qualify for copyright registration and protection.

FORTY-SECOND DEFENSE

42. Any alleged registration of copyright by the Plaintiff concerning the material within the Work is invalid.

FORTY-THIRD DEFENSE

43. Any alleged registration of copyright by the Plaintiff concerning the material within the Work failed to disclose and/or include relevant and/or material facts, including failing to include licensee(s) and/or joint owners.

FORTY-FOURTH DEFENSE

44. Defendant University Press reserves the right to amend its answer and affirmative defenses and/or to assert additional defenses and affirmative defenses upon the proceeding and/or completion of investigation and discovery.

1 WHEREFORE, having fully answered or otherwise responded to the allegations
2 contained in the amended complaint, Defendant University Press of Mississippi
3 prays for judgment as follows:

4

5 1. University Press denies each and every allegation not specifically admitted or
6 otherwise responded to hereinabove. The University Press specifically asserts that,
7 to its knowledge, other party(ies) own(s) copyright rights to the relevant material
8 included in its publication, it denies that Plaintiff owns copyright rights to any
9 relevant material, and it denies it has infringed or is liable for infringement of any
10 copyrights or copyright rights of the Plaintiff or that it has violated the Plaintiff's
11 rights. The University Press respectfully prays that this Court will dismiss the
12 amended complaint in its entirety and with prejudice.

13

14 2. University Press denies that the Plaintiff is entitled to any relief whatsoever
15 of any kind against the University Press and that the University Press should be
16 dismissed from this action. University Press further has the right of indemnity in
17 this matter.

18

19 3. University Press should recover from Plaintiff and be awarded all costs of
20 this action including expenses and attorneys' fees to the maximum extent allowed
21 by law.

22

23 4. University Press should be provided with and recover all such other and
24 further relief as the Court deems just and proper.

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26 //

27 //

1 Dated: January 18, 2017

Respectfully submitted,

2 **JIM HOOD**
3 Attorney General of Mississippi
4 /S LAWRENCE A. SCHEMML
5 Office of the Attorney General
6 MSB NO. 9811

7 *Attorneys for Defendant*
8 *University Press of Mississippi*

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Certificate of Service

I hereby certify that on January 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following: William O. Luckett, Jr., Esq., wol@lucketttyner.com, Counsel for Plaintiff, and E. Barney Robinson, III, Esq., barney.robinson@butlersnow.com and John C. Henegan, Esq., john.henegan@butlersnow.com, Counsel for Defendant Haley R. Barbour, and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: NA.

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Respectfully submitted,

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S/ LAWRENCE A. SCHEMML
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*Attorneys for Defendant
University Press of Mississippi*